

**STATE OF ALASKA****THE REGULATORY COMMISSION OF ALASKA**

Before Commissioners:

Robert A. Doyle, Chairman  
 John M. Espindola  
 Keith Kurber II  
 Robert M. Pickett  
 Janis W. Wilson

In the Matter of the Revenue Requirement Study )  
 Designated as TA334-4 Filed by ENSTAR ) U-22-081  
 NATURAL GAS COMPANY, LLC )  
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**ENSTAR'S CLOSING REBUTTAL BRIEF**

ENSTAR<sup>1</sup> faces significant business risks operating as a natural gas transmission and distribution utility in Southcentral Alaska. The risks include challenging economic conditions, declining average use per customer, ownership and operation of substantial transmission assets, geographic isolation, availability of natural gas supply, and small size. ENSTAR's risk factors set it apart from utilities in the Lower 48 and proxy group companies and increase its relative risk for an investor. The Commission recognized ENSTAR's company specific risk factors in Order U-16-066(19) issued in ENSTAR's last rate case, and these factors are not only present today, but many of these risks have increased since its last rate case. Consistent with its approach throughout this proceeding,

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<sup>1</sup> The short-hand references, including acronyms, used in this Rebuttal, have the same meaning as defined in *ENSTAR's Closing Brief*, December 28, 2023 ("Closing Brief").

RAPA attempts to downplay the Commission's prior order and blatantly ignores the facts. ENSTAR's Closing Brief summarized the evidence presented in this Docket and demonstrated that the evidence overwhelmingly supports a decision from this Commission authorizing ENSTAR's requested ROE of 12.95%. This Closing Rebuttal Brief will respond to RAPA's Closing Arguments<sup>2</sup> and (1) identify the applicable burden of proof, (2) clarify the legal standard for the Commission's decision, (3) support ENSTAR's proxy group, (4) refute RAPA's criticisms of ENSTAR's cost of common equity models, (5) respond to RAPA's arguments on ENSTAR's risk factors, and (6) explain that RAPA's arguments regarding ENSTAR's achieved ROE are impermissible retroactive ratemaking and ENSTAR's revenue requirement appropriately includes a pro forma adjustment for taxes.

**I. ENSTAR Met Its Burden of Proof for Approval of Its Requested ROE.**

In Commission proceedings, "the preponderance of the evidence is the standard of proof unless otherwise stated."<sup>3</sup> The Commission has not identified an alternative standard for this proceeding, therefore the preponderance of the evidence applies. To meet its burden, ENSTAR must provide evidence for the Commission to find in its favor that is "the slightest bit greater" than not.<sup>4</sup> The Commission's factual findings will be

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<sup>2</sup> *Office of the Attorney General's Closing Arguments*, December 28, 2023 (RAPA Closing Arguments).

<sup>3</sup> *Amerada Hess Pipeline Corp. v. Alaska Pub. Utilities Comm'n*, 711 P.2d 1170, 1179 fn. 14 (Alaska 1986).

<sup>4</sup> Alaska Civil Pattern Jury Instruction 2.04; *Long v. Arnold*, 386 P.3d 1217, 1221–22 (Alaska 2016).

upheld in an appeal if they are “supported by relevant evidence that a reasonable person might accept as adequate to support them.”<sup>5</sup> Decisions that involve agency expertise are reviewed under the “rational basis” standard and must be reasonable.<sup>6</sup>

RAPA baldly claims that ENSTAR failed to meet its burden of proof in this matter. This claim ignores the record and the applicable burden of proof, which RAPA never identifies. As demonstrated by the voluminous citations to the record in its Closing Brief, ENSTAR has met its burden for approval of its requested ROE by a preponderance of the evidence.

## **II. Application of the *Hope* and *Bluefield* Standard and Commission Precedent Balances Investor and Consumer Interests.**

RAPA acknowledges that *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*<sup>7</sup> and *Federal Power Commission v. Hope Natural Gas*<sup>8</sup> provide the legal precedents for determining a fair ROE for a public utility.<sup>9</sup> The Commission is required by statute to ensure that the rates charged by ENSTAR are just

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<sup>5</sup> *Amerada Hess Pipeline Corp. v. Regul. Comm'n of Alaska*, 176 P.3d 667, 673 (Alaska 2008).

<sup>6</sup> *Id.* (The Court upheld the Commission’s ROE determination finding “RCA had a reasonable rather than an arbitrary basis, supported by the record, for its approach. A reviewing court is not entitled to probe further. RCA has adequately explained any departure from agency precedent and is supported by the record in arriving at its rate of return conclusions.” *Id.* at 685).

<sup>7</sup> 262 U.S. 679 (1923).

<sup>8</sup> 320 U.S. 591 (1944).

<sup>9</sup> RAPA Closing Arguments at 2.

and reasonable.<sup>10</sup> A fair ROE is a required component of just and reasonable rates.<sup>11</sup>

### **III. ENSTAR's Utility Proxy Group is Representative of ENSTAR's Hybrid Nature as a Transportation and Distribution Utility.**

ENSTAR's ROE expert, Mr. D'Ascendis selected a proxy group made up of natural gas distribution companies, transmission companies, and hybrid companies.<sup>12</sup> The group is representative of ENSTAR's operations and assets as a hybrid transportation and distribution utility. The proxy group also tracks this Commission's decision in Order U-16-066(19) that found including transmission companies in ENSTAR's proxy group "generally" moderates ENSTAR's "increased risk relative to Lower 48 LDCs" due to "its substantial transmission assets."<sup>13</sup>

RAPA concedes that 38% of ENSTAR's physical assets are transmission assets,<sup>14</sup> but argues against the inclusion of transmission companies in ENSTAR's proxy group because ENSTAR derives 10% or less of its revenues from transmission operations.<sup>15</sup>

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<sup>10</sup> AS 42.05.381(a); Order U-16-066(19) at 10.

<sup>11</sup> Order U-16-066(19) at 10 ("To determine just and reasonable rates we review a utility's proposed total annual required earnings, known as the revenue requirement. At a high level, the revenue requirement is the sum of the utility's legitimate expenses, plus annual depreciation, *plus a fair return on investment.*") (emphasis added); Order U-19-070(21), et al., *Order Resolving Revenue Requirement and Cost-of-Service Issues, Requiring Filings, and Allowing Comment*, Jan. 19, 2021 at 8-9.

<sup>12</sup> T-2 at 7, DWD-3, Schedule 1R at 3; Tr. 96-97 (D'Ascendis to Stojak).

<sup>13</sup> Order U-16-066(19), *Order Resolving Revenue Requirement and Cost-of-Service Issues and Requiring Filings*, September 22, 2017 at 50.

<sup>14</sup> RAPA Closing Arguments at 7.

<sup>15</sup> *Id.* at 6. RAPA cited to testimony from HEA witness Ms. Palazzari in support of this argument. That testimony is not a part of the hearing evidentiary record. All Parties to this Docket, including RAPA, stipulated that "for purposes of leaving the litigation of

RAPA is mistaken. First, RAPA ignores the evidence in the record that clearly rebuts their argument. Measures of income (which in the case of a utility are directly derived from rate base) are far more likely to be considered by the financial community in making investment decisions than revenues and by rating agencies in evaluating companies.<sup>16</sup> Second, RAPA ignores the physical reality of ENSTAR's operations (significant transmission assets) and the benefit ENSTAR's transmission assets have for all customers, not just transportation customers. As the Cost-of-Service study ("COSS") shows<sup>17</sup>, a significant portion of the costs of ENSTAR's transmission operations are allocated to and recovered from distribution rates. For example, ENSTAR's COSS demonstrates that 67% of its transmission expenses are recovered through distribution rates.<sup>18</sup> In Docket U-16-066, RAPA candidly testified:

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ROE to only ENSTAR and RAPA, MEA and HEA do not request admission of their prefiled testimony addressing ENSTAR's rate of return, including ROE, cost of debt, and/or capital structure." RAPA is bound by the terms of this agreement and the Commission should disregard RAPA's argument. *See* Order U-22-081(11), *Order Accepting Partial Stipulation, Rescheduling Hearing, Denying Motion for Expedited Consideration, Amending Docket Caption, and Redesignating Commission Panel*, October 11, 2023, Appendix to Order U-22-081(11), *Partial Stipulation Resolving All Rate Case Issues: (1) Among ENSTAR and Transportation Customers, and (2) Between ENSTAR and RAPA, Excluding ROE* at 11-12 ¶ IV.3.

<sup>16</sup> T-2 at 8-9.

<sup>17</sup> Prefiled Reply Testimony of Chelsea N. Guintu, Exhibit CNG-4 at 39-71. The Parties stipulated that "the permanent rates in this Docket shall be based on ENSTAR's proposed revenue requirement as presented in Exhibit CNG-4 to Ms. Guintu's Prefiled Reply Testimony, adjusted based on the agreements in [the] Partial Stipulation and adjusted for the final Commission allowed ROE." Order U-22-081(11), Appendix at 11 III.10.

<sup>18</sup> *Id.* at 40-4, 68-69.

ENSTAR plant used for the transportation of gas to all customers is so thoroughly interdependent that efforts to isolate specific portions of the system that serve particular customers is not only impractical, but will produce inappropriate distortions in the COSS.<sup>19</sup>

This Commission held:

Customers need not be directly or physically connected to a unit of plant in order to benefit from its existence. The integrated nature of the ENSTAR system results in a superior overall system from the standpoint of reliability and economic efficiency. All classes of customers benefit from the integrated system and, therefore, must share in the costs.<sup>20</sup>

Similarly here, ENSTAR provides both transportation service and local distribution service over its integrated transmission and distribution system as a hybrid utility.<sup>21</sup> The risks of ENSTAR's operation as both a transmission and distribution utility are materially different from a typical local distribution company. Therefore, a proxy group containing some regulated transmission operations is appropriate.<sup>22</sup> All of ENSTAR's customers, transportation and local distribution, benefit from ENSTAR's transmission assets and the risk taken by ENSTAR in operating those assets. Mr. D'Ascendis' proxy group is representative of ENSTAR's physical makeup and operational characteristics.<sup>23</sup> RAPA's proxy group, which fails to include transmission entities, does not.

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<sup>19</sup> Order U-16-066(19) at 101.

<sup>20</sup> *Id.* at 102.

<sup>21</sup> T-1 at 26-27; T-2 at 77; T-6 at 9-11; Order U-16-066(19) at 8, 50.

<sup>22</sup> T-1 at 28.

<sup>23</sup> *Id.* at 27. Because cost of equity is an opportunity cost, Mr. D'Ascendis' proxy group should be seen as investment alternatives to ENSTAR as well.

#### **IV. ENSTAR's Quantitative Cost of Common Equity Models Reasonably Support ENSTAR's Proposed Fair ROE.**

ENSTAR presented credible evidence from Mr. D'Ascendis to support his cost of common equity models. Mr. D'Ascendis relied on multiple models<sup>24</sup> because "reasonable investors use a variety of tools and do not rely exclusively on a single source of information or single model."<sup>25</sup> The models selected by Mr. D'Ascendis focus on different aspects of return requirements and therefore provide different insights into investors' views on risk and return. Mr. D'Ascendis used multiple generally accepted common equity cost rate models to add reliability and accuracy to his determination of a proposed common equity cost rate.<sup>26</sup>

RAPA's Closing Arguments on the cost of common equity models simply repeat the claims made by its witness, Mr. Parcell, in his testimony. RAPA's Closing Arguments are not evidence, and Mr. Parcell's claims were addressed and thoroughly rebutted by Mr. D'Ascendis in his prefiled reply testimony and oral testimony at hearing. Rather than repeat Mr. D'Ascendis' testimony here, ENSTAR respectfully requests that the Commission refer to the testimony evidence in reaching its decision.<sup>27</sup> ENSTAR does address certain of RAPA's arguments below.

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<sup>24</sup> DCF, CAPM, RPM, and application of the quantitative models to non-price regulated firms.

<sup>25</sup> T-1 at 31.

<sup>26</sup> *Id.*

<sup>27</sup> *See* T-2 at 20-61.

***A. ENSTAR's Proxy Group Results in a More Representative DCF.***

ENSTAR agrees with RAPA's assertion that proxy group selection, not the experts' inputs into their DCF models, creates the largest difference between Mr. D'Ascendis' and Mr. Parcell's respective DCF estimates.<sup>28</sup> ENSTAR's proxy group recognizes the Commission's decision in Order U-16-066(19) and accurately reflects ENSTAR's asset base, risks, and operations, none of which have materially changed since Order U-16-066(19) was issued.<sup>29</sup> Therefore, Mr. D'Ascendis' DCF is a more representative model for determining a fair ROE for ENSTAR.

***B. Mr. D'Ascendis' RPM is Reasonable.***

RAPA argues that the Commission should refrain from relying on Mr. D'Ascendis' predictive risk premium model ("PRPM") because of (1) alleged concerns related to the software used by Mr. D'Ascendis, (2) the "high ROE" predicted by the model, and (3) the equity risk premiums calculated by Mr. D'Ascendis. None of these arguments have merit. As a part of estimating the cost of common equity with the PRPM, Mr. D'Ascendis used a relatively available and inexpensive standard commercial statistical software package to develop a means by which to estimate the cost of common equity.<sup>30</sup> RAPA argues against the PRPM methodology, claiming that the software used by Mr. D'Ascendis is trademarked and the Commission should "stay clear" from accepting a

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<sup>28</sup> RAPA Closing Arguments at 11-12.

<sup>29</sup> These facts were uncontested.

<sup>30</sup> T-2 at 55.



methodology that can only be tested by access to commercially licensed software.<sup>31</sup> However, RAPA is incorrect that the software is trademarked, it is not. Further, RAPA does not argue that it was unable to test the methodology.

RAPA also claims incorrectly that the “high ROE” predicted by PRPM is an immediate “red flag” because the model produces ROEs in excess of 15 percent for proxy group companies.<sup>32</sup> First, and quite interestingly, Mr. Parcell’s modelling on behalf of RAPA also produces an ROE above 15 percent, but that apparently is not a “red flag.”<sup>33</sup> Second, the PRPM has withstood academic rigor and has been admitted six times in four different peer-reviewed academic journals and has not been rebutted in the academic literature in the decade since it has been published. The findings of the model and its applications are published in textbooks that specialize in the cost of capital. The model has been accepted in full or in part in other regulatory proceedings. And the model on which the PRPM is based is contemplated by investment professionals.<sup>34</sup>

As for the total market approach, RAPA claims that Mr. D’Ascendis used equity risk premiums based on assumed total equity returns that allegedly “exceed the 2021, 2022, and 2023 return on average common equity for Mr. Parcell’s proxy group utilities of 11.1 percent, 11.5 percent, and 11.4 percent, respectively.”<sup>35</sup> However, RAPA is

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<sup>31</sup> RAPA Closing Arguments at 17.

<sup>32</sup> *Id.* at 15-17.

<sup>33</sup> T-8, DCP-2, Schedule 7 at 5.

<sup>34</sup> T-2 at 54-59.

<sup>35</sup> RAPA Closing Arguments at 18 (internal footnote omitted).

attempting to compare apples to oranges. The total equity returns referenced by RAPA are based on the total market returns for the S&P 500,<sup>36</sup> *not* Mr. Parcell’s proxy group utilities. An apples to apples comparison demonstrates that the S&P 500 return on average equity for 2019, 2020, and 2021 was 15.8%, 10.2%, and 20.5%, respectively.<sup>37</sup>

***C. Mr. D’Ascendis Appropriately Relied on a Traditional CAPM and ECAPM.***

Mr. D’Ascendis used both a traditional CAPM and the ECAPM to calculate an indicated ROE.<sup>38</sup> RAPA claims that Mr. D’Ascendis estimated a market risk premium (“MRP”) for his CAPM analysis of 9.91% that represents a fair premium over the risk-free rate that investors could realistically expect to realize on investing in an enterprise like ENSTAR.<sup>39</sup> RAPA is essentially stating that a MRP should be lower for ENSTAR when using this model as compared to similarly situated companies, which is baseless and wrong. Rather than relying on one set of data, Mr. D’Ascendis derived a MRP from an average of three historical data-based MRPs, two based on Value Line data, and one based on Bloomberg data.<sup>40</sup> The 9.91% risk premium estimated by Mr. D’Ascendis is the risk premium of investing in the market.<sup>41</sup> Notably, the actual MRP has exceeded

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<sup>36</sup> Compare T-2, DWD-3 at 26 fn. 4, 6, with RAPA Closing Arguments at 18.

<sup>37</sup> T-8, DCP-2 at 22 (Schedule 11).

<sup>38</sup> See T-1 at 55; T-2, DWD-3, Schedule 1R at 31.

<sup>39</sup> RAPA Closing Arguments at 13.

<sup>40</sup> T-1 at 53-54; T-2, DWD-3, Schedule 1R at 32.

<sup>41</sup> *Id.*

9.91% three out of the last five years.<sup>42</sup>

RAPA also criticizes Mr. D’Ascendis for his use of the ECAPM in his analysis claiming there is no support for its application to price-regulated firms.<sup>43</sup> But, this Commission has adopted the ECAPM for the calculation of an ROE for price-regulated entities and in Order P-07-004(151) specifically found that the ECAPM was “more accurate then (sic) traditional CAPM results....”<sup>44</sup> Importantly, the Alaska Supreme Court upheld the Commission’s Order P-07-004(151) ROE calculation.<sup>45</sup> The Commission should disregard RAPA’s argument here.

***D. RAPA’s Comparable Earnings Analysis is Flawed.***

RAPA included a comparable earnings (“CE”) model in its ROE analysis. Mr. Parcell used his utility group as well as the entire S&P 500 for his CE calculation. This choice of proxy groups in the context of a CE analysis is flawed.

The proxy group selected for a CE analysis should be broad-based to obviate any company-specific aberrations. It should also exclude utilities to avoid circularity since the achieved returns on book common equity of utilities, as a function of the regulatory process, are influenced by regulatory rewards. Therefore, the CE analysis of Mr. Parcell’s

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<sup>42</sup> T-2, DWD-3, at 48 (Schedule 4R at 2).

<sup>43</sup> RAPA Closing Arguments at 14.

<sup>44</sup> Tr. 125 (D’Ascendis to ALJ Davis); Order P-07-004(151), *Order Rejecting 1997, 1998, 1999 and 2000 Filed TAPS Rates; Setting Just and Reasonable Rates; Requiring Refunds and Filings; and Outlining Phase II Issues*, November 27, 2002 at 146 (upheld on appeal in 176 P.3d 667 at 685).

<sup>45</sup> 176 P.3d 667 at 685.

utility proxy group should be rejected.<sup>46</sup>

Mr. Parcell's use of the entire S&P 500 is too broad-based to be comparable in total risk to his proxy utilities or ENSTAR.<sup>47</sup> Also, the S&P 500 as a whole does not meet the "corresponding risk" requirement from *Hope* and *Bluefield*.<sup>48</sup> Because neither Mr. Parcell's utility proxy group nor the S&P 500 are appropriate for a CE analysis, it should be rejected.

***E. Mr. D'Ascendis' Application of the Cost of Common Equity Models to a Comparable Risk Proxy Group of Non-Price Regulated Firms is Reasonable.***

Mr. D'Ascendis also applied his cost of common equity models to a proxy group made up of non-price regulated firms that are comparable in total risk to ENSTAR. RAPA concedes that there is no legal impediment to using non-price regulated firms as a proxy.<sup>49</sup> As Mr. D'Ascendis explained:

[N]either the *Hope* nor *Bluefield* cases specify that comparable risk companies must be regulated utilities... non-price regulated firms operating in the competitive marketplace are an excellent proxy if a group can be selected to be comparable in total risk to the proxy group on whose market data one relies on to estimate the cost of common equity.<sup>50</sup>

RAPA argues against Mr. D'Ascendis' use of non-price regulated companies in his

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<sup>46</sup> T-8 at 48-52.

<sup>47</sup> Mr. Parcell's use of the entire S&P 500 as a data set stands in stark contrast to RAPA's criticism of Mr. D'Ascendis' analysis of non-price regulated companies discussed in Section IV.E. of this Closing Rebuttal Brief.

<sup>48</sup> *Id.*

<sup>49</sup> RAPA Closing Arguments at 9.

<sup>50</sup> T-2 at 42.

calculations and claims that a firm's beta does not capture all the inherent differences between regulated and unregulated firms.<sup>51</sup> But, beta is only one measure of risk, which is why Mr. D'Ascendis used beta (market risk) *and* standard errors of regressions (non-market risk) for his non-price regulated company selection criteria. Companies that have similar beta coefficients and similar residual standard errors resulting from the same regression analysis have similar total investment risk.<sup>52</sup> Perplexingly given its argument here, RAPA ignores Mr. Parcell's use of the entire S&P 500 without screening criteria in his CE analysis.<sup>53</sup> Mr. D'Ascendis' proxy group of non-price regulated firms is comparable in total risk to his utility proxy group and his use of the proxy group as one component of his analysis is reasonable.<sup>54</sup>

**V. ENSTAR's Specific Business Risks Increase its ROE Risk Relative to the Proxy Group.**

This Commission held in Order U-16-066(19) that ENSTAR's company-specific risk factors increase its risk from an ROE perspective compared to the proxy group in that case.<sup>55</sup> These factors included challenging economic conditions, declining average use per customer, ownership and operation of substantial transmission assets, geographic isolation, natural gas supply, and small size compared to the companies in the proxy

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<sup>51</sup> RAPA Closing Arguments at 9.

<sup>52</sup> T-1 at 57.

<sup>53</sup> T-8 at 52.

<sup>54</sup> T-1 at 56; T-2, DWD-3, Schedule 1R at 36.

<sup>55</sup> Order U-16-066(19) at 52.

group. These risks all still apply to ENSTAR's operations and several have increased since Order U-16-066(19) was issued. ENSTAR summarized the evidence that establishes ENSTAR's company-specific risks in its Closing Brief<sup>56</sup> and will limit its arguments here to responding to RAPA's Closing Arguments.

***A. ENSTAR's Small Size Increases Its Relative Risk.***

This Commission recognized that ENSTAR's small size increased its risk relative to the proxy group for ROE purposes in Order U-16-066(19),<sup>57</sup> and the evidence in this record demonstrates that ENSTAR's small size relative to the proxy group indicates greater relative risk.<sup>58</sup> Mr. D'Ascendis performed two studies that quantitatively demonstrate that as utility size decreases, annualized volatility increases linking size and risk for utilities.<sup>59</sup> Mr. D'Ascendis also discussed the financial literature that supports a size adjustment for utilities and directly rebuts the article relied on by RAPA to argue against a size adjustment.<sup>60</sup> Disregarding the evidence and the Commission, RAPA baldly argues that there is no evidence evaluating ENSTAR's size risk in this record.<sup>61</sup>

RAPA asserts that various "risk indicators – safety ranking, beta, financial strength ratings, S&P ratings, and Moody's ratings" do not reflect a risk differential related to size

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<sup>56</sup> Closing Brief at 18-37.

<sup>57</sup> Order U-16-066(19) at 52.

<sup>58</sup> *Id.*

<sup>59</sup> T-2 at 48-50.

<sup>60</sup> T-2 at 48.

<sup>61</sup> RAPA Closing Arguments at 26.

for electric utilities.<sup>62</sup> The “risk indicators” are summarized by Mr. Parcell in a table in his testimony:<sup>63</sup>

Cap Size	Safety	Beta	Financial Strength	S&P Rating	Moody’s Rating
Under \$10 B	1.8	.88	A	BBB+	Baa1
\$10-\$30 B	2.1	.89	B++/A	BBB+	Baa2
Over 30 B	1.5	.86	A/A+	BBB+	Baa2

Examination of Mr. Parcell’s table demonstrates that contrary to RAPA’s claims, larger electric utility companies are rated overall as less risky than smaller. Specifically, the average safety, beta, and financial strength ratings for electric utilities with a market capitalization under \$10 billion all indicate more risk than electric utilities with a market capitalization above \$30 billion.<sup>64</sup> RAPA’s own evidence demonstrates that smaller electric utilities are overall riskier than the largest.<sup>65</sup> There is no dispute that ENSTAR is significantly smaller than the proxy group companies, which increases its relative risk.<sup>66</sup>

***B. The Commission Should Disregard RAPA’s Unsupported Argument About Risks Faced by the Proxy Companies.***

RAPA claims that weather events in other jurisdictions indicate that the proxy

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<sup>62</sup> RAPA Closing Arguments at 23.

<sup>63</sup> T-8 at 66.

<sup>64</sup> The average S&P rating is equal and the average Moody’s Rating for both groups is investment grade, Baa1 for under \$10 billion and Baa2 for over \$30 billion.

<sup>65</sup> RAPA does not explain how its claims translate to a hybrid natural gas transportation and distribution utility like ENSTAR.

<sup>66</sup> T-1 at 62.

group companies face risks as well.<sup>67</sup> But RAPA does not cite to any evidence to support this claim, nor can it because the record contains no evidence on this point. In its opening statement, RAPA displayed a slide that purported to show U.S. weather and climate events. A cursory review of the slide suggests that the weather events depicted would not impact an underground utility such as ENSTAR. However, neither the slide nor the document the slide purported to represent was introduced into evidence. Further, no facts related to the weather and climate events, or their impact on utilities, were introduced as evidence at hearing. Commission orders must be based on the facts of record.<sup>68</sup> The Commission should give no weight to RAPA's unsupported argument here.

***C. ENSTAR's Evidence Demonstrates Its Gas Supply Risk, ENSTAR Faces Imminent Potential Gas Supply Shortages.***

RAPA argues that because gas is available on the world market, ENSTAR does not face imminent gas supply risk, only challenges related to infrastructure.<sup>69</sup> RAPA's argument flies in the face of the facts and ridiculously understates the gravity of ENSTAR's gas supply situation. ENSTAR presented evidence that there is a potential shortage in overall produced gas volumes facing gas users in the Cook Inlet region in the next two to three years.<sup>70</sup> Additionally, with its current contracts, ENSTAR will fall at

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<sup>67</sup> RAPA Closing Arguments at 26.

<sup>68</sup> AS 42.05.191.

<sup>69</sup> RAPA's Closing Arguments at 26-27.

<sup>70</sup> T-3 at 6-7; H-12 at 8.



least 1.6 Bcf short of its full requirements beginning in 2026.<sup>71</sup> Importing LNG from the world market is a complex task and could take a minimum of 4 to 6 years and significant resources to develop this gas supply option.<sup>72</sup> This timeframe will not assist with ENSTAR's more immediate needs in the next two to three years. Further, investment in the infrastructure necessary to import LNG will require a fair ROE sufficient to attract the capital necessary for such an investment.

**VI. RAPA's Unsupported Argument on ENSTAR's Achieved ROE is Impermissible Retroactive Ratemaking and ENSTAR's Revenue Requirement Appropriately Includes an Income Tax Allowance.**

RAPA argues that ENSTAR's revenue requirement may have exceeded its authorized rate of return during one or more years between its last rate case and the current proceeding.<sup>73</sup> There is *no* evidence that RAPA cites to support a finding that ENSTAR over earned its revenue requirement at any time after Order U-16-066(19) was issued. The only evidence that RAPA cites is to the contrary, which is Mr. Dieckgraeff's testimony that ENSTAR failed to earn its authorized ROE during the test year.<sup>74</sup> Further, RAPA's unsupported arguments about ENSTAR's earnings in past years clearly violate the prohibition against retroactive ratemaking. As this Commission is well aware:

Retroactive ratemaking is a regulatory taboo in Alaska and a majority of jurisdictions. Rates may only be altered prospectively, without any attempt to recapture past excess profits, or to redress deficient past revenues. The

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<sup>71</sup> T-7 at 7.

<sup>72</sup> T-7, JDS-8 at 9;

<sup>73</sup> RAPA Closing Arguments at 28-30.

<sup>74</sup> RAPA Closing Arguments at 28; T-4 at 34.

protects the reliance interest of a utility and its customers in the stability of rates filed by a utility and approved by regulators.<sup>75</sup>

“[W]hen calculating the amount of revenue to be collected under proposed rates, or when allocating rates between classes or within a class, the commission cannot adjust for past losses or gains to either the utility, consumers, or particular classes of consumers.”<sup>76</sup>

RAPA also claims that there is no evidence on the amount of income tax paid by ENSTAR, making its realized ROE uncertain. ENSTAR’s revenue requirement includes *a pro forma provision for income taxes as specified by regulation*.<sup>77</sup> This adjustment is not at issue and was resolved earlier by stipulation.

It is unclear what RAPA’s point is with these arguments. Regardless, by RAPA’s own admission there is no evidence to support its speculation.<sup>78</sup> The Commission should give RAPA’s discussion here no weight.

### Conclusion

If ENSTAR is awarded its requested ROE, the average G1 customer would only see an increase in permanent rates of approximately \$1.35 per month, which is a 1.02% increase in rates.<sup>79</sup> ENSTAR has met its burden by a preponderance of the evidence to

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<sup>75</sup> 176 P.3d at 685.

<sup>76</sup> Stefan H. Kriger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. ILL. L.REV. 983 (1991) at 997.

<sup>77</sup> 3 AAC 48.275(8).

<sup>78</sup> AS 42.05.191 (“Every formal order of the commission shall be based upon the facts of record.”)

<sup>79</sup> See H-15; also see Tr. 188-192 (Sims to Reynolds and Wilson).

support its proposed ROE of 12.95% and has demonstrated that approval of the proposed ROE will result in just and reasonable rates. The Commission should award ENSTAR a fair and reasonable ROE of 12.95%.

DATED this 8th day of January 2024, at Anchorage, Alaska.

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